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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 21st March 2011

No. 2730—li/1(B)-44/2001-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th January 2011 in I. D. Case No. 268 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s IPISTEEL Ltd., At Gundichapada, Dhenkanal and its workman Shri Khageswar Behera was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

#### IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

#### INDUSTRIAL DISPUTE CASE NO. 268 OF 2008

(Previously registered as 72 of 2001 in the file of the Presiding Officer,  
Labour Court, Bhubaneswar)

Dated the 28th January 2011

*Present:*

Shri Raghbir Dash, o.s.j.s. (Sr. Branch),  
Presiding Officer,  
Industrial Tribunal, Bhubaneswar.

*Between:*

The Management of .. First-party—Management  
The Deputy General Manager,  
M/s IPISTEEL Ltd.,  
At Gundichapada,  
Dist. Dhenkanal.

And

Shri Khageswar Behera, .. Second-party—Workman  
C/o. Kalandi Ch. Rout,  
At Mina Bazar (Kumbhar Sahi),  
P.O./Dist. Dhenkanal.

**Appearances :**

S. T. Ullaha Authorised Representative	.. For the First Party Management
Shri S. Mohanty, Advocate	.. For the Second Party Workman

**AWARD**

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') made by the Government of Orissa in Labour & Employment Department vide their Order No. 17518—li/1(BH)-44/2001-L.E., dated the 20th December 2001 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li/21-32/2007-L.E., dated the 4th April 2008. The Schedule of reference runs as follows :—

"Whether the dismissal of Shri Khageswar Behera, with effect from 1-8-1997 by the Management of M/s IPISTEEL Ltd., Cuttack is legal and/or justified ? If not, to what relief he is entitled ?"

2. The case of the second-party as narrated in the claim statement, in short, is that he was initially appointed on 24-10-1985 as a Time Keeper and subsequently on Dt. 8-12-1989 promoted to the post of Head Time Keeper. In the year 1996 he was unanimously elected as President of the IPISTEEL Employees Union which is a registered trade union functioning in the first-party establishment. Because of his trade union activities the management wanted to get rid of him. Because of serious illness of the second-party and being advised by the E.S.I. Doctor he availed leave from Dt. 28-3-1997. During his treatment he was advised for better treatment under a specialist. Accordingly, he availed treatment of a Doctor at Dhenkanal. As he was not fit to resume duties he remained on leave till 7-11-1997. He had duly intimated the first-party from time to time about his ill health and sought for extension of leave. While he was still under the treatment all on a sudden the first-party notified on Dt. 16-7-1997 that the second-party had been suspended from service with effect from 15-7-1997. Having come to know this the second-party submitted a representation before the first-party mentioning in detail about his health condition. On Dt. 8-11-1997 he on the advise of the Doctor reported for duty but was intimated that he had already been dismissed from service with effect from 1-8-1997. On being served with a copy of the order of dismissal he raised the industrial dispute challenging the order of dismissal.

It is further pleaded that he was not granted any opportunity to defend the charges, that he was not served with any charge sheet and that no second showcause notice was served on him.

3. The Management has contended in its written statement that since 21-2-1997 the second-party had been absenting from his duties without any intimation to the Management. Subsequently, he started sending E.S.I. Medical certificates. The last Medical Certificate was valid up to 22-5-1997. But on Dt. 21-5-1997 the second-party came to the Head Office of the first-party and forcibly took hold of the Attendance Register and unauthorisedly made entries therein. Though in the last Medical Certificate he was declared fit to resume duty on Dt. 22-5-1997 the second-party did not join and continued to remain absent without any intimation to the first-party. A number of registered letters sent to the second-party came back undelivered with the postal remark "always absent", thereby suggesting that he was remaining away from his home. Therefore, the Management framed a chargesheet on Dt. 14-7-1997 and sent it to the workman in his local address by registered post with A.D. and simultaneously publication in the Oriya daily newspaper the "Dharitree" was

made wherein it was also intimated that an enquiry on the charges was to be held on Dt. 23-7-1997 at 10-30 A.M. in the premises of the Management Head Office at Cuttack. The second-party did neither attend the enquiry nor take any step in that regard. Therefore, the Enquiry Officer conducted the enquiry *ex parte* and submitted his report holding the workman guilty of the charges. Since the charges contained allegations of commission of serious misconduct he was dismissed from service.

4. Basing on the pleadings of the parties, the following issues have been settled :–

### ISSUES

- (i) Whether the domestic enquiry was fair and proper ?
- (ii) Whether the dismissal of Shri Khageswar Behera with effect from 1-8-1997 by the management of IPISTEEL Ltd., Cuttack is legal and/or justified ?
- (iii) If not, to what relief he is entitled ?

5. The management examined the Enquiry Officer as M.W. No. 1 on the other hand, the workman examined himself as W.W. No. 1.

6. When the proceeding in this I.D. Case was at the stage of argument the management made a mention that the fairness of the domestic enquiry be decided as a preliminary issue and in case the Tribunal held that the enquiry was not fair and valid, then the management be given opportunity to adduce further evidence. On this submission order was passed by this Tribunal to takeup Issue No. 1 as a preliminary Issue. On Dt. 21-9-2010 findings on Issue No. 1 have been recorded which are reproduced hereunder :–

“It is a case of dismissal of the workman with effect from 1-8-1997 which was preceded by a domestic enquiry. The workman contends that the enquiry was not fair and proper. It is specifically pleaded that while the workman was on leave from 28-3-1997 till 7-11-1997 on sickness ground the enquiry was conducted during that period even though the workman had given intimation to the management about his illness from time to time. During the said leave period, it is contended, the management notified on Dt. 16-7-1997 that the workman had been suspended with effect from 15-7-1997 and having come to know about that fact the workman had submitted his representation but no opportunity to defend against the charges was extended to the workman nor the chargesheet containing the charges was served on him. Further, no scope was given to the workman to have his say on the proposed punishment. In course of argument much emphasis was placed by the learned counsel for the workman that even before passing of the order of suspension of the workman the management had already appointed the Enquiry Officer (for short, the E.O.) and that the E.O. on the date appointed for the enquiry did not issue any notice to the workman even though he found him to be absent and proceeded with the enquiry, which he completed just within two days.

The management, on the other hand, takes the plea that though the workman was declared fit for duty with effect from 22-5-1997, he absented himself from duties unauthorisedly for which the management issued several registered letters but all returned unserved on the ground that the workman was absent. On 14-7-1997 the management framed chargesheet and sent it to the workman at his local address, besides making a newspaper publication in the Oriya daily ‘The Dharitree’ asking the workman to appear before the Enquiry Officer on Dt. 23-7-1997. Despite of such notice, it is pleaded, the workman preferred not to take part in the enquiry, nor did he submit any explanation to the charges. Therefore, the E. O. held the enquiry *ex parte*. It is contended that the domestic enquiry was conducted fairly and properly.

I have heard both sides and I have gone through the materials placed before this Tribunal.

About the workman's sickness, the management admits that the workman was sick and he was declared fit to resume duties on Dt. 22-5-1997 as per the E.S.I. medical certificate. The workman has taken the plea that he remained on leave till 7-11-1997 and on the next date he reported for duties but was told that he had already been dismissed. He has not shown that he had duly intimated the management about his sickness from Dt. 22-5-1997 onwards. It is also not shown that the workman had intimated to the management about his postal address during the period of his sickness. From the claim statement, it appears that the workman had come across the newspaper publication dated 16-7-1997 (Ext. 2) wherein the management had published a notice to the effect that the second-party workman had been suspended from service with effect from 15-7-1997 (Para. 9 of the claim statement). Rather, it is pleaded by the workman that after knowing such publication he submitted a representation before the first-party stating about his health condition and also furnished his explanation on the charges. It is claimed that representation was acknowledged by the management. According to the management, though the workman was fit to join duty on Dt. 22-5-1997 and he was on leave as on Dt. 21-5-1997, he had come to the office on Dt. 21-5-1997 and forcibly made some entries in the Attendance Register which is one of the charges framed against the workman. Since the workman has not shown that he had duly intimated the management about his illness on and from Dt. 22-5-1997 so also about his postal address, no fault can be found with the management for its sending the order of suspension alongwith the chargesheet by registered post as well as notifying the same in the Newspaper. In the notice the management had fixed the date, place and time of enquiry but the workman did not appear. Therefore the E.O. proceeded *ex parte*. It is argued that the E.O. should have adjourned the enquiry proceeding and issued a notice to the workman to give him an opportunity to take part in the proceeding. But no authority is cited in support of the contention that the E.O. was required to adjourn the proceeding when the delinquent workman was found absent and the proceeding should have been adjourned till his appearance. Similarly, the completion of the enquiry proceeding within two days when the workman did not take part in the proceeding is also not a circumstance for drawing an inference that the E.O. was not impartial or he had shown unreasonable haste to complete the enquiry.

On the objection that the management had appointed the E.O. before the framing of charges or suspension of the workman it is to be mentioned that charges were framed on Dt. 14-7-1997 (vide Ext. 5) and the same was published in the Oriya daily newspaper on Dt. 16-7-1997 (vide Ext. 2). The E.O. has admitted in his deposition that four to five days prior to Dt. 9-7-1997 he was informed by the management that he was going to be appointed as the E.O. Thus, it is clear that before the charges were framed the management had decided to appoint M.W. No. 1, Shri Subash Chandra Pani, as the E. O. But that itself is not sufficient to have any reflection on the fairness of the enquiry. It might be a fact that much prior to the framing of charge the management had contemplated to proceed against the workman departmentally for an alleged incident Dt. 21-5-1997 but in the process of drawing up the proceeding there was some delay for which the charges were framed at a later stage. That apart, this plea is not taken in the claim statement of the workman.

It is further contended on behalf of the workman that the workman was not served with the chargesheet which is denied by the management. The charges framed against the workman has been published in the Oriya daily newspaper vide Ext. 2. According to the management the charges were framed on Dt. 14-7-1997 vide Ext. 5. The charges contained in Ext. 5 and also the charges published in Ext. 2 run as follows :—

1. That you came to the office on Dt. 21-5-1997 although you were not fit for duty as per the ESIC-MED-11 (f) submitted by you which said that you were fit to resume duty on Dt. 22-5-1997. Coming to the office on Dt. 21-5-1997 shows that you were actually fit and healthy on that day. It was seen that you took hold of the Attendance Register and in your own handwriting you wrote (L) from Dt. 21-5-1997 to 31-5-1997 without

applying for leave and without getting the same sanctioned by the proper authority. You granted leave to yourself. This amounts to *mala fide* manipulation of office records and amounts to serious misconduct and an act of highly subversive of discipline.

2. That you have been absenting yourself from your duties with effect from Dt. 22-5-1997 although you were declared fit to work by the E.S.I. Doctor. Neither you have applied for any leave nor taken any permission from the Management. The work of the establishment has suffered much due to your unauthorised absence. This shows your very callous and irresponsible attitude towards the management and is an act of subversive of discipline.

In the report submitted by the E.O. (marked Ext. 6) one of the charges narrated at page 4 and 5 of the report is totally different from the above mentioned charge No. 2 contained in Ext. 5 and Ext. 2. The E.O. has mentioned in his report that the delinquent workman was chargesheeted as under :—

1. You came to the office on 21-5-1997 although you were not fit for duty as per ESIC-MED-11 (f) submitted by you which said that you were fit to resume duty on 22-5-1997. Coming to the office on 21-5-1997 shows that you were actually fit and healthy on that day. You took hold of attendance register and in your own handwriting you wrote the word "SL" from 7-4-1997 to 20-5-1997 and you wrote "L" from Dt. 21-5-1997 to 31-5-1997 and without applying for leave and without getting the same sanctioned by the competent authority as if you granted leave to yourself. This amounts to manipulation of the attendance register and amounts to serious misconduct.
2. You are again absenting yourself from your duties without any kind of intimation to the management with effect from 22-5-1997 up-to-date. This also amounts to serious misconduct and grossly irresponsible conduct on the part of a Head Time Keeper. On verification of records, it is found that the contribution of the P.F. and E.S.I. of contractor workers for the month of June 1996 and October 1996 have not been deposited. It has also been found that there has been difference of P.F., E.S.I. deduction from the bill of the contractor for the period from April 1996 to September 1996. After checking it was found that there has been an excess deposit of Rs. 1,705 towards P.F. and Rs. 434 towards E.S.I.

It has also been found that there has been difference between deduction and deposit of P.F. in each and every month both for regular employees and contractor employees. All these mistakes show that you have been negligent in performance of your duties as the Head Time Keeper.

Charge No. 1 and part of Charge No. 2 as reflected in the E.O.'s report find place in Ext. 2, Ext. 5 but the rest part of Charge No. 2 appearing in the E.O.'s report does not find place in Ext. 2/ Ext. 5. It is not understood wherefrom the E.O. got the charges related to an alleged improper maintenance of P.F. and E.S.I. Accounts resulting in the alleged excess deposit towards P.F. and E.S. I. It is not shown by the management that the charges which are reflected in the enquiry report wereever served on the workman. It is clear that charges have been framed against the workman on two different occasions, otherwise additional charges would not have appeared in the report of the E.O. In case the management amended the charges then the amended charges should have been served on the workman. Therefore, it is to be presumed that some of the charges which were dealt by the E.O. in his report were not communicated to the workman and he was not afforded an opportunity to submit his explanation on such charges. The management has not explained as to

how the charges framed on 14-7-1997 differs from the charges that the E.O. has dealt with in his report. Since the charges dealt with by the E.O. were not communicated to the workman in order to give him an opportunity to submit his explanation, if any, to the additional charges, it is to be held that the principle of natural justice has been violated and for that the enquiry can not be said to have been held fairly and/or properly.

In the result, the Issue on the fairness of the domestic enquiry is answered against the management. Now, I shall switch over to the remaining issues.

#### Finding on Issue No. 2

7. Since Issue No. 1 has been answered against the management, this Tribunal offered an opportunity to the management to adduce evidence on the charges. On Dt. 23-11-2010 learned representative of the first-party filed a petition stating therein that since all the persons who had given their statements during the domestic enquiry were no more available to be examined before the Tribunal the management did not want to adduce further evidence except marking exhibit of one document. Accordingly, the document was marked as Ext. 10 and the case was adjourned for evidence on the remaining issues. Thereafter, none appeared for the management and the workman also did not adduce further evidence. Therefore, the case has been closed vide Order Dt. 3-1-2011.

Thus, it is found that the management has failed to adduce evidence on the charges. In the absence of evidence it cannot be said that the workman was guilty of misconduct. Consequently, the order of dismissal which is impugned in this I.D. Case is held to be illegal and not justified.

#### Finding on Issue No. 3

8. This is a case of illegal order of dismissal. The workman is aged about 51-52. He has pleaded that he has not been in gainful employment elsewhere since the date of his dismissal. His claim that he was holding a permanent post is not denied by the management. Considering the facts and circumstances of this case this Tribunal directs reinstatement of the second-party with full back wages.

The reference is answered accordingly. The management to comply with the Award within a period of two months of the date of publication of the Award in the Official Gazette.

Dictated and corrected by me.

RAGHUBIR DASH

28-1-2011

Presiding Officer

Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH

28-1-2011

Presiding Officer

Industrial Tribunal, Bhubaneswar

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By order of the Governor

P. K. PANDA

Under-Secretary to Government

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